No. 163, Original

In the Supreme Court of the United States

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF CALIFORNIA AND FRANCHISE TAX BOARD OF CALIFORNIA,

Defendants.

BRIEF IN OPPOSITION

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STATEMENT

1. Under the Due Process and Commerce Clauses of the Constitution, "a state may not, when imposing an income-based tax, 'tax value earned outside its borders.'" *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 164 (1983). Accordingly, "[w]hen a business earns income in multiple jurisdictions, apportionment is necessary to avoid tax duplication or other inequity." *Gillette Co. v. Franchise Tax Bd.*, 62 Cal.4th 468, 473 (2015). Because "arriving at precise territorial allocations of" income is "an elusive goal, both in theory and in practice," many States rely on a "formula apportionment method" to approximate a corporation's income within and without the State. *Container Corp.*, 463 U.S. at 164-165. Those methods typically rely on "objective measures of the corporation's activities" to apportion income. *Id.* at 165.

California's Uniform Division of Income for Tax Purposes Act (UDITPA) adopts a "single sales factor" formula apportionment method for most corporations. Cal. Rev. & Tax. Code § 25128.7. That formula, which has served as California's principal apportionment method since 2013, relies on calculation of a "sales factor," which is a "fraction, the numerator of which is the total sales of the taxpayer in [California] during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year." Cal. Rev. & Tax. Code § 25134. The sales factor represents a "ratio comparing sales in [California] to total sales everywhere." *Microsoft Corp. v. Franchise Tax Bd.*, 39 Cal.4th 750, 756 (2006).

Multiplying the sales factor with total business income yields the income apportioned to the State, Cal. Rev. & Tax. Code § 25128.7; and multiplying that

product by the applicable tax rate computes the corporation's state tax, *e.g.*, *id.* § 23151 (tax rates for corporations).[1] Increases in sales in California will thus "lead to a larger fraction, greater apportioned income, and higher tax." *Microsoft Corp.*, 39 Cal.4th at 757. "[C]onversely, increases in out-of-state [sales] will lead to a reduction in the fraction attributable to California and a reduction in California tax." *Id.*

At present, the majority of States that tax business income rely on a single sales factor formula to apportion income. Fed'n of Tax Admin., *State Apportionment of Corporate Income* (Jan. 2023), https://tinyurl.com/te6ze55p. A handful of States rely on a three-factor formula, calculating an apportionment factor based on a combination of sales, payroll, and property attributable to the State. *Id.* Florida asserts that it is a three-factor formula State, Mot. 21, though it also appears to authorize apportionment through a single sales factor formula for taxpayers that make a "qualif[ying] capital expenditure" of at least $250 million in a two-year period within the State, Fla. Stat. Ann. § 220.153 (2024).

2. This case concerns the way California identifies the "total sales of the taxpayer" in calculating the sales factor. Cal. Rev. & Tax. Code § 25134. The California tax code couples a general definition of "sales"

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[1] Business income is the total taxable "income arising from transactions and activity in the regular course of the taxpayer's trade or business." Cal. Rev. & Tax. Code § 25120(a); *see also* 18 Cal. Code Regs. § 25120 ("In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income."). Nonbusiness income is allocated. *Id.* § 25123. Allocation frequently, *e.g.*, *id.* § 25124(a), but not always, *e.g.*, *id.* §§ 25124(b), (c), 25127, leads to the entire receipt being taxable in only one jurisdiction.

with a detailed list of exceptions. *See id.* § 25120(f). "'[S]ales' means all gross receipts of the taxpayer not allocated under" provisions of the tax code. *Id.* § 25120(f)(1). "Gross receipts means the gross amounts realized . . . on the sale or exchange of property, the performance of services, or the use of property or capital . . . in a transaction that produces business income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code." *Id.* § 25120(f)(2). Twelve categories of receipts are then excepted from the definition of "sales" to properly reflect a taxpayer's regular trade or business of selling goods or services. The receipts excluded from the definition of "sales" range from litigation damages and tax refunds to loan repayments and receipts from certain hedging transactions. *Id.* §§ 25120(f)(2)(A)-(f)(2)(L).

The Franchise Tax Board is the state agency that administers California's franchise and income taxes. *See* Cal. Rev. & Tax. Code § 19501. The Board has promulgated regulations that further clarify which forms of revenue qualify as "sales" in certain scenarios. *E.g.*, 18 Cal. Code Regs. §§ 25134-25137. These regulations include several "special rules" that cover certain situations to ensure the sales factor is not distorted by incidental or occasional activities. *Id.* § 25137. For example, one rule excludes from the sales factor calculation any "[i]nsubstantial amounts of gross receipts arising from incidental or occasional transactions or activities" such as "the sale of office furniture, business automobiles, etc." *Id.* § 25137(c)(1)(B). Another rule excludes "interest and dividends from intangible assets held in connection with a treasury function of the taxpayer's unitary business." *Id.* § 25137(c)(1)(D).

Florida challenges the Board's special rule concerning the "occasional sale of a fixed asset or other property held or used in the regular course of the taxpayer's trade or business." 18 Cal. Code Regs. § 25137(c)(1)(A). Such occasional sales "shall be excluded from the sales factor" if they are deemed "substantial." *Id.* "[A] sale is substantial if its exclusion results in a five percent or greater decrease in the sales factor denominator of the taxpayer." *Id.* A sale is "occasional if the transaction is outside of the taxpayer's normal course of business and occurs infrequently." *Id.*[2]

The special rule is "based on the rationale that" the occasional sale of a substantial asset "do[es] not fairly reflect the taxpayer's day-to-day business activity and therefore cause[s] excessive income to be apportioned to the state where the occasional sale took place." Cal. Franchise Tax Bd., Legal Ruling 1997-1, *Exclusion of Gross Receipts from Incidental or Occasional Sales of Intangible Property from the Sales Factor* (Oct. 15, 1997), https://tinyurl.com/bdf6x256. "This is especially so if the growth of built-in appreciation occurs over a substantial period of time, because taking the gross receipts into account in the year of a recognition event does not reflect the gradual effects of appreciation over several years." *Id.*

The rule is also based on the rationale that a corporation's gross receipts may contribute over time to the value of an asset, such as a subsidiary or goodwill,

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[2] Although the special rule was originally limited to occasional sales involving "fixed assets," such as factories, it was amended to encompass intangible assets, such as "patents" or an "affiliate's stock" held or used in the regular course of taxpayer's trade or business. 18 Cal. Code Regs. § 25137(c)(1)(A).

and that such assets may likewise contribute to a corporation's sales. *In re Amarr Co.*, 2022-OTA-041P (Dec. 9, 2021) at 16 (describing "an intrinsic relationship" between the value of a corporation's asset and its "gross receipts from its regular sales made to customers"). In that scenario, "it is reasonable to conclude that the sales factor . . . is a fair reflection of California's contribution to the goodwill," *id.* at 18; *see also In re T. Faries*, 2022-OTA-068 (Jan. 5, 2022) at 19 ("[T]he income at issue—largely gain realized on the sale of goodwill—was accumulated over time as a result of [the company's] operational business activities in numerous states."). The exclusion of the substantial, occasional sale from the sales factor fairly apportions income from the sale among all the States in which the taxpayer does business and has sales, rather than just the State where the occasional sale occurs.

The Board adopted the special rule in June 1973, shortly after the Multistate Tax Commission issued a similar model regulation in February of the same year. That model Regulation IV.18.c ("Special Rules: Sales Factor") also excluded from the sales factor substantial gross receipts arising from "an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business."[3] Although the Commission repealed the special rule in 2017 in favor of a more general rule that functionally excludes substantial, occasional sales from the sales factor, "many states" adopted rules akin to the challenged special rule. Hellerstein, *State Taxation* § 9.18 at 101-102 (3d

[3] Multistate Tax Comm'n, Model Reg. IV.18.(c), Special Rules: Sales Factor, https://tinyurl.com/yvcmuwx9.

ed. 2025).[4] Today, several States retain a rule excluding receipts—or authorizing exclusion of receipts—arising from the incidental or occasional sale of assets in the calculation of their sales factor.[5] Indeed, Florida itself authorizes taxpayers to request, and state tax officials "to require," an adjustment to the sales factor if the "gross receipts arising from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business would materially distort the sales factor." Fla. Admin. Code R. 12C-1.0155(1)(b) (2019).[6]

3. Although California's standard apportionment formula incorporates the special rule, UDITPA provides a "relief provision for dealing with any unreasonable calculations" resulting from "rote application" of the apportionment rules, including the special rule. *Microsoft Corp.*, 39 Cal.4th at 764. If the standard apportionment rules "do not fairly represent the extent of the taxpayer's business activity in this state," the Board may calculate tax liability through any alternative "method to effectuate an equitable allocation and apportionment of the taxpayer's income." Cal. Rev. &

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[4] *See* Multistate Tax Comm'n, Model General Allocation and Apportionment Regulations (July 25, 2018), https://tinyurl.com/4u688wsb.

[5] *E.g.*, 15 Alaska Admin. Code 19.302; 9 Ariz. Admin. Code § R15-2D-903; Ark. Admin. R. 2.26-51-715; 18 Haw. Admin. R. § 18-235-38-03; 86 Ill. Admin. Code § 100.3380; 17 N.C. Admin. Code § 1002; N.D. Admin. Code § 81-03-09-34; Utah Admin. Code § R865-6F-8; 110 W. Va. Code R. § 110-24-6.

[6] While Florida's tax authorities have indicated that application of the rule should be "very rare," the rule still recognizes that inclusion of gross receipts from certain sales may materially distort the sales factor. Florida Dep't of Revenue, Technical Assistance Advisement 14C1-001 (Jan. 16, 2014), https://tinyurl.com/4xkwrn8u.

Tax. Code § 25137(d). This provision is typically reserved for "cases where unusual fact situations . . . produce incongruous results." 18 Cal. Code Regs. § 25137. The relief provision is available "to deal with potentially unconstitutional results," *Microsoft Corp.*, 39 Cal.4th at 770 n.21, and also available generally when standard apportionment does not fairly represent the extent of the taxpayer's business in California.

A taxpayer invoking section 25137 bears the burden of proving by clear and convincing evidence that "the approximation provided by the standard formula is not a fair representation" and that its "proposed alternative is reasonable." *Microsoft Corp.*, 39 Cal.4th at 765.[7] Procedurally, a taxpayer seeking relief under section 25137 may first petition the Board's staff to use an alternative apportionment method. 18 Cal. Code Regs. §§ 25137(d)(1)(G), (d)(2). If staff agrees that relief is warranted, the taxpayer's liability is calculated under the alternative apportionment method. Successful petitions to staff are not made public or otherwise published. *Id.* § 25137(d)(2)(A) ("Any records of the Franchise Tax Board staff that are not submitted to the Franchise Tax Board, itself, shall remain confidential.").

If staff concludes that an alternative apportionment method is not warranted, the taxpayer may petition the full Board to hear and decide the request. *See* 18 Cal. Code Regs. § 25137(d)(2)(B). The Board is required to "render its decision on the taxpayer's petition during an open session at a regularly scheduled

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[7] The California Supreme Court has observed that this statutory standard for relief is "lesser" than the "*constitutional* standard for striking down a tax under the due process and commerce clauses." *Microsoft Corp.*, 39 Cal.4th at 765 n.16.

meeting." *Id.* § 25137(d)(3)(C). A taxpayer who is unsuccessful before the Board may appeal to the Office of Tax Appeals. *See* 18 Cal. Code Regs. §§ 30103, 30104. This administrative appeal process allows a taxpayer to present its case to a panel of administrative law judges. *Id.* §§ 30303, 30401. The Office of Tax Appeals publishes a written opinion for each appeal. *See id.* § 30501.

Finally, a taxpayer who disagrees with the Office of Tax Appeal's resolution of an administrative appeal may file—after paying the disputed taxes and filing an administrative claim for a refund—a refund action in California superior court. *See* Cal. Rev. & Tax. Code § 19384; *see also generally Loeffler v. Target Corp.*, 58 Cal.4th 1081, 1101-1102 (2014). Although administrative appeals do not encompass constitutional claims, a taxpayer seeking review in a state court refund action may pursue such claims. *E.g.*, *California v. Grace Brethren Church*, 457 U.S. 393, 414 (1982). A taxpayer may then proceed through the ordinary channels of judicial review, including, if necessary, by seeking review in this Court. *E.g.*, *Container Corp.*, 463 U.S. at 159; *Butler Bros. v. McColgan*, 315 U.S. 501 (1942); *see also Gillette Co. v. Franchise Tax Bd.*, 137 S. Ct. 294 (2016) (denying certiorari in case challenging apportionment formula).

Taxpayers have invoked those processes to seek relief from the special rule governing occasional sales and to request inclusion of receipts from occasional sales in the sales factor. Board staff have in the past allowed an alternative apportionment method, concluding in specific cases that application of the special

rule does not "fairly represent the extent of the taxpayer's business activity in this state." Cal. Rev. & Tax. Code § 25137.[8]

Board staff and the Board have also denied petitions for relief. *E.g., In re T. Faries*, No. 2022-OTA-068 (Jan. 5, 2022) at 19. Taxpayers denied relief by the Board have subsequently sought relief from the Office of Tax Appeals and in state court.[9] One case presenting federal constitutional challenges to the special rule is pending summary judgment proceedings in state superior court. *See Worthington Oil & Gas Corp. v. Franchise Tax Bd.*. No. 24WM000066 (Cal. Super. Ct. Sacramento Cnty.) (hearing scheduled Apr. 28, 2026).

4. Florida does not allege that it pays business income taxes to California under the special rule. *E.g.*, Mot. 3. And despite the administrative and judicial remedies available to corporate taxpayers who believe their business activities are not fairly represented by the special rule, Florida seeks leave to file an original action against California challenging the special rule on several constitutional grounds. Florida alleges harm in the form of lost tax revenue. Mot. 15. In Florida's view, the special rule results in under-taxation of

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[8] Because these petitions would not have been submitted to the Board itself, they are not public. *Supra* p. 7; 18 Cal. Code Regs. § 25137(d)(2)(A).

[9] *E.g.*, *id.*; *In re Worthington Oil & Gas Corp.*, No. 2024-OTA-217 (March 8, 2024); *In re Amarr Co.*, No. 2022-OTA-041P (Dec. 9, 2021); *see also Wynnefield Bros. Int'l LLC v. Franchise Tax Bd.*, No. CGC-25-624073 (Cal. Super. Ct. San Francisco Cnty. Apr. 4, 2025); *Wynnefield Bros. Int'l LLC v. Franchise Tax Bd.*, No. A1474794 (Cal. Ct. App.); *Worthington Oil & Gas Corp. v. Franchise Tax Bd.*. No. 24WM000066 (Cal. Super. Ct. Sacramento Cnty. Feb. 21, 2025).

California corporations and over-taxation of out-of-state companies, thereby "incentivizing" corporations to move from other States, including Florida, to California, and for other corporations to stay in California, rather than to move to Florida. *Id.* at 16. Apart from tax revenue losses, Florida alleges that over-taxation of corporations has the effect of reducing Florida's "investment revenues" as a shareholder. *Id.* at 17. On a similar theory, Florida asserts harm in its role as "*parens patriae*" (at 15), on behalf of residents and businesses who own stocks in "any of the overtaxed corporations," *id.* at 18. Florida seeks a declaration that California's special rule is unconstitutional and requests a permanent injunction against the rule's application or enforcement. Mot. 29.

ARGUMENT

Florida's motion for leave to file a bill of complaint should be denied because this is not an appropriate case for the exercise of this Court's original jurisdiction. Florida does not assert the type of interests that would warrant its exercise, and the issues Florida seeks to present can be adequately litigated by multistate corporations that are actually subject to the challenged rule. Florida also fails to establish standing or show that it would be appropriate to consider its claims in the absence of record evidence about the circumstances of individual taxpayers. And Florida's claims fail on the merits. As this Court has repeatedly emphasized, "States have wide latitude in the selection of apportionment formulas." *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 274 (1978). Florida provides no sensible basis for questioning the validity of California's apportionment method—a method that a number of other States have adopted. *Supra* n.5.

I. FLORIDA FAILS TO SATISFY THE DEMANDING STANDARD FOR INVOKING THIS COURT'S ORIGINAL JURISDICTION

1. This Court's "original 'jurisdiction is of so delicate and grave a character that it was not contemplated that it would be exercised save when the necessity was absolute.'" *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992). Original actions require this Court to "exercise its extraordinary power under the Constitution to control the conduct of one state at the suit of another." *New York v. New Jersey*, 256 U.S. 296, 309 (1921). They also require the Court to assume the role of factfinder, burden the Court's resources, and constrain its capacity to address questions of national importance in cases that have proceeded through the lower courts in the ordinary course. *See Ohio v. Wyandotte Chems. Corp.*, 401 U.S. 493, 498-499 (1971).

Accordingly, the Court has "said more than once that [its] original jurisdiction should be exercised only 'sparingly.'" *Mississippi*, 506 U.S. at 76. The "threatened invasion of rights" must be "of serious magnitude." *New York*, 256 U.S. at 309. The State seeking to initiate the original proceeding "must allege . . . facts that are clearly sufficient to call for a decree in its favor." *Alabama v. Arizona*, 291 U.S. 286, 291 (1934). Jurisdiction "will not be exerted in the absence of absolute necessity." *Id.* And original jurisdiction is not appropriate where a State is "merely litigating as a volunteer the personal claims of its citizens." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976) (per curiam); *see also South Carolina v. North Carolina*, 558 U.S. 256, 277 (2010) (Roberts, C.J., concurring in judgment in part and dissenting in part) ("Original jurisdiction is for the resolution of *state* claims, not private claims.").

The Court distilled these principles into two factors that guide whether to entertain an original suit. First, it examines "'the nature of the interest of the complaining State,' focusing on the 'seriousness and dignity of the claim.'" *Mississippi*, 506 U.S. at 77 (citation omitted). Second, it considers "the availability of an alternative forum in which the issue tendered can be resolved." *Id.* Florida's claims fail in both respects.[10]

2. a. In distinguishing state claims from private claims, this Court asks whether the claims implicate "'serious and important concerns of federalism,'" *Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992), or the States' "sovereign or quasi-sovereign interests," *Pennsylvania*, 426 U.S. at 666. The "'model case'" is a "'dispute between States of such seriousness that it would amount to *casus belli* if the States were fully sovereign'"—that is, just cause for declaration of war. *Mississippi*, 506 U.S. at 77. Illustrative examples include disputes over boundaries, use or pollution of shared waterways, and interstate compacts. *See, e.g.*, Shapiro et al., *Supreme Court Practice* § 10.2, p. 10-7 (11th ed. 2019) (collecting cases).

Florida's asserted interests are nothing like the types of sovereign interests that warrant this Court's exercise of original jurisdiction. Instead, Florida contends that California's apportionment formula "rewards *corporations* that keep their operations in California" and penalizes "*corporations* operating outside its borders." Mot. 3, 15 (emphases added). This

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[10] This Court has consistently held that its original jurisdiction over disputes between States is discretionary. *See, e.g.*, *Wyoming v. Oklahoma*, 502 U.S. 437, 450-451 (1992). Florida does not ask this Court to overturn that settled precedent, let alone advance the kind of special justification required to do so.

Court sometimes resolves tax disputes involving corporate taxpayers of this kind—but in the ordinary course after granting a petition for writ of certiorari, not by exercising its original jurisdiction. *E.g.*, *Hunt-Wesson, Inc. v. Franchise Tax Bd.*, 528 U.S. 458 (2000); *Container Corp.*, 463 U.S. at 163. And this Court has repeatedly declined to consider tax disputes like the one Florida presents, reasoning that such suits "represent[] nothing more than a collectivity of private suits against" the taxing State. *Pennsylvania v. New Jersey*, 426 U.S. 660, 666 (1976).[11]

Florida's contrary arguments in support of original jurisdiction are not persuasive. *See* Mot. 4-5, 15-18. Quoting *Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992), Florida contends that "'[i]t is beyond peradventure'" that a State presents claims of "sufficient 'seriousness and dignity'" when it "alleges it is being deprived of tax revenue by another State in violation of the United States Constitution." Mot. 4. *Wyoming* does not stand for that broad principle. In *Wyoming*, the challenged statute required Oklahoma's power plants to purchase at least 10% of their coal from in-state mines, when they had previously "purchased virtually 100% of their coal requirements from Wyoming sources." 502 U.S. at 440, 445. The Court held that Wyoming's challenge presented "an appropriate [case] for the exercise of [its] original jurisdiction" because

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[11] *See also Massachusetts v. Missouri*, 308 U.S. 1, 16-17 (1939) (denying Massachusetts leave to file a bill of complaint premised on "the reciprocal provisions of the tax statutes of the two States"); *New York v. New Jersey*, 429 U.S. 810 (1976) (same involving challenge to commuter income tax); *Arizona v. New Mexico*, 425 U.S. 794 (1976) (same involving challenge to electricity generation tax); *Arizona v. California*, No. 22O150 (Feb. 24, 2020) (denying motion for leave to file a bill of complaint challenging California's LLC taxes).

the Oklahoma statute "*directly* affect[ed] Wyoming's ability to collect severance tax revenues" on sales of its coal to Oklahoma utilities. *Id.* at 450-451 (emphasis added).

Here, Florida's theory of injury is indirect and highly attenuated. Florida is not a regulated entity under California's franchise tax laws; it does not pay taxes to California calculated with the special rule. Nor does Florida suffer any direct tax revenue losses from California's application of the special rule. Florida acknowledges that the amount of business income it apportions from both "Florida-incorporated compan[ies]" and "corporations that stay in or relocate to California" is independent of California's challenged apportionment formula. Mot. 12-13, & nn.12-14; *see Massachusetts*, 308 U.S. at 15 (denying leave to file an original complaint when "the validity of each claim [to tax] is wholly independent of that of the other"); *Pennsylvania*, 426 U.S. at 664 (same).[12]

Florida's alleged loss of tax revenue instead arises from the indirect effects of the special rule on taxed corporations. In Florida's view, corporations are "incentiviz[ed]" by the tax consequences to stay in or move to California, rather than to Florida. Mot. 16. The net loss of domiciled corporations, Florida alleges, "deprives Florida of tax revenue." *Id.* Setting aside its dubious foundation, *infra* pp. 18-21, that theory of injury is entirely dependent on the response of private corporations to the special rule, confirming that Florida's suit is, "after all, [a] suit[] to redress private

[12] And nothing would prevent Florida from adopting an apportionment method like California's. *See Pennsylvania*, 426 U.S. at 664 (declining to exercise original jurisdiction when "injuries to the plaintiffs' fiscs were self-inflicted, resulting from decisions by their respective state legislatures").

grievances," not sovereign harms. *Pennsylvania*, 426 U.S. at 665.

Florida's reliance (Mot. 4) on *Maryland v. Louisiana*, 451 U.S. 725 (1981), is also misplaced. The Court exercised original jurisdiction over a challenge brought by the federal government and several States to a Louisiana law imposing a tax for gas produced on federal lands in the outer continental shelf and piped into Louisiana for processing. *Maryland*, 451 U.S. at 728-732. The plaintiff States were "directly affected in a 'substantial and real' way" because they were "major purchasers of natural gas," and the tax was "clearly intended to be passed on to the ultimate consumer," *id.* at 736-737. Florida's allegations here are not comparable.

To the extent Florida suggests that its general interest in policing the Commerce Clause (and related constitutional limits) is sufficient to invoke this Court's original jurisdiction, Florida is wrong. *See* Mot. 5 (citing THE FEDERALIST No. 7 (Alexander Hamilton)). This Court has repeatedly denied leave to file bills of complaint alleging Commerce Clause and related claims. *E.g.*, *Missouri v. California*, 586 U.S. 1065 (2019); *Indiana v. Massachusetts*, 586 U.S. 1065 (2019); *Arizona*, 425 U.S. at 795.

Finally, Florida discusses—in a separate section of the complaint about standing—its indirect interest "as a shareholder based on loss of corporate revenue," and its interest "as *parens patriae*" to redress the investment losses of some of its citizens and businesses. Mot. 15. Even assuming such losses, *but see infra* pp. 18-21, they are hardly the "serious and important concerns of federalism" forming this Court's original jurisdiction. *Maryland*, 451 U.S. at 726. On the con-

trary, a complaint grounded in such interests is no different "from any one of a host of such actions" that States could attempt to bring on behalf of private parties. *Ohio*, 401 U.S. at 504. If States could volunteer to litigate personal claims for their citizens in the first instance in this Court, the floodgates would open and "put[] this Court into a quandary whereby [it] must opt either to pick and choose arbitrarily among similarly situated litigants or to devote truly enormous portions of [its] energies to such matters." *Id.*

b. Florida's motion fails for the additional reason that there is an alternative forum for addressing the issues it raises. *See, e.g.*, *Alabama*, 291 U.S. at 292 (denying leave to file bill of complaint where Alabama "fail[ed] to show" that the issues it sought to raise "may not, or indeed will not," be pressed by the private party "directly concerned").

Any taxpayer that believes California has improperly assessed taxes against it may pursue a prepayment administrative appeal or a post-payment refund action in California courts, or both. *Supra* pp. 6-9. Review in this Court would then be available through the Court's appellate jurisdiction. That is the ordinary manner in which this Court reviews claims of unconstitutional state taxation. In fact, "[v]arious aspects of state tax systems based on . . . formula apportionment have provoked repeated constitutional litigation in this Court"—including in cases involving California taxes. *Container Corp.*, 463 U.S. at 163-164. Florida itself highlights several administrative challenges to the special rule that have been brought by private taxpayers, Mot. 14-15, as well as a lawsuit filed in California superior court contesting the rule on federal constitutional grounds, *id.* at n.4; *supra* p. 9.

Florida argues that it cannot bring such suits in any other court, federal or state. Mot. 6. But the relevant question is not whether *Florida* can sue elsewhere; it is whether there is an "alternative forum in which *the issue tendered* can be resolved." *Mississippi*, 506 U.S. at 77 (emphasis added); *see Alabama*, 291 U.S. at 292. Otherwise, the existence of an alternative forum would never be relevant to this Court's decision whether to hear an original dispute between States. But that argument is inconsistent with the Court's practice of exercising its original jurisdiction only "'sparingly,'" *Mississippi*, 506 U.S. at 76, as demonstrated by the regular denials of leave to file to States suing other States. *See, e.g.*, *Arizona*, 425 U.S. at 797.

Florida responds that its interests would not be "adequately represented" by the "affected corporations" bringing private suits. Mot. 6. But the affected corporations are the most natural plaintiffs because they are directly affected by California's application of the special rule. And while Florida asserts that there is "no pending action to which this Court could defer adjudication," Mot. 5, that is wrong. *Supra* p. 9 (noting ongoing state court proceedings in *Worthington Oil & Gas Corp.*). In any event, the existence of a currently pending action is not necessary to establish the existence of an alternative forum. This Court requires only the availability of an alternative forum in which the issues "*can* be resolved." *Mississippi*, 506 U.S. at 77 (emphasis added).

It is notable that the rule has been in effect in California for over half a century, and part of a single sales factor formula for over a decade, *supra* p. 1. Given the direct monetary incentive to litigate tax liability (and the absence of a flood of litigation about the rule or a conclusive court decision "address[ing its]

constitutionality," Mot. 5), it is doubtful that the special rule "systematic[ally] overtax[es] corporations operating outside [California's] borders," *id.* at 15. *Cf. Chisom v. Roemer*, 501 U.S. 380, 396 n.23 (1991) ("silence in this regard can be likened to the dog that did not bark").

II. FLORIDA LACKS STANDING AND ITS CLAIMS ARE MERITLESS

1. Apart from failing to satisfy the standards for original actions, Florida fails to demonstrate that it has standing to pursue its claims. *Massachusetts*, 308 U.S. at 15 (denying leave because "proposed bill of complaint does not present a justiciable controversy between the States"). Florida does not allege that it is directly regulated by the challenged rule. To establish standing in such circumstances, the unregulated "plaintiff must show that the [regulated] 'third parties will likely react in predictable ways' that in turn will likely injure the plaintiffs." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024). Florida does not show anything of the kind.

Florida's theory of lost tax revenue is dependent on the improbable response of taxed corporations and "a highly attenuated chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). Florida's theory requires a business to make its commercial domicile decisions on the basis of California's special rule. Mot. 16. But the rule, by its terms, has a very limited and rare application: it applies only "infrequently" to "transaction[s] outside of the taxpayer's normal course of business," 18 Cal. Code Regs. § 25137(c)(1)(A); it covers only "substantial" sales, *id.*; and it may not even apply if it is shown that the rule "do[es] not fairly represent the extent of the taxpayer's business activity in this state," Cal. Rev. & Tax. Code

§ 25137(a). It would make little sense for a business to structure its day-to-day operations because of a rare, down-the-road possibility of an asset sale. Unsurprisingly, Florida's complaint lacks factual allegations about corporate movement at all, let alone businesses' movement precipitated by the special rule away from Florida (or any other State) into California. The only factual claims in Florida's complaint about "domestic migration" alleges the opposite. Mot. 2.

Florida also lacks allegations to corroborate its claim that a corporation relieved of the special rule would choose *Florida* as its commercial domicile over other States, so as to increase *Florida's* tax revenue. Although Florida does not mention it in its complaint, its own tax code contemplates adjustments to the sales factor if the "gross receipts arising from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business would materially distort the sales factor." Fla. Admin. Code R. 12C-1.0155(1)(b) (2019). A business relieved of California's special rule would thus have no guarantee that it would receive better tax treatment in Florida.

Florida's tax loss theory also relies on several speculative and unreasonable assumptions. For one, Florida supposes that every out-of-state corporation with an occasional sale of a business asset would see higher California taxes as a result of the special rule. *See* Mot. 12, 13, 16, 23. But the special rule is agnostic to the location of a corporation's headquarters, State of incorporation, or place of payroll and property. And Florida ignores that a corporation may directly own and sell property located in a State different from where the corporation is incorporated or headquartered. For instance, a Florida corporation may own and sell California property. Under Florida's theory,

the Florida corporation would pay less tax in California under the special rule than if the property was located outside of California. Likewise, a California corporation may directly own and sell non-California property. Under Florida's theory, that California corporation would pay higher California taxes for selling that non-California property. These examples eliminate the foundation for Florida's claims: that the special rule "rewards corporations that keep their operations in California and penalizes those that move out." *Id.* at 3.[13]

Florida's theory also fails to account for situations where a corporation incurs an apportionable business loss instead of business income. Where a corporation incurs an apportionable business loss, and that corporation's apportionment factor is calculated with the special rule, that corporation may apportion a larger percentage of that loss to California. Under California law, that loss could lead to a larger net operating loss

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[13] Florida also focuses on unlikely hypotheticals involving the sale of physical property in a State because such sales are unlikely to trigger the special rule as a "substantial" sale. The more typical sale involves a business's sale of an interest in a partnership or LLC, where that entity owns real property and the assets are more than 50% intangibles, such as good will. In that scenario, the location of the real property is entirely irrelevant because the sales factor for the interest that is sold is used to assign the receipts from the sale when including those receipts in the sales factor. 18 Cal. Code Regs. § 25136-2(d)(1)(A)(1)(b). If the sale was not a substantial occasional sale, then the receipts would be assigned to the location of the market (sales factor) of the interest sold, not to where the real estate is located. If the same sale was excluded from the sales factor under the special rule, it would be entirely removed from the sales factor denominator and, to the extent such sales would be assigned to California (based on the partnership's/LLC's sales factor), from the numerator as well.

deduction available for the corporation's use on subsequent years tax returns. Cal. Rev. & Tax. Code § 25108. Thus, a corporation (wherever domiciled) may pay *lower* taxes from application of the special rule in subsequent years where it has an apportionable business loss.

Florida's theory of "diminish[ed] investment revenue[]," Mot. 17-18, is likewise inadequate. Florida alleges that its agencies invest in funds that hold stock in companies that are overtaxed by the special rule. Mot. 17. But it is far from clear that any "occasional" and "infrequent[]" tax liability would result in material investment losses. And even if Florida could establish such losses, its allegations are inadequate to evaluate the special rule's net effect (if any) on its overall stock holdings. That is because Florida's holdings likely include stock in California corporations—corporations that Florida says are under-taxed.[14]

Florida's *parens patriae* standing (at 17-18)—on behalf of "Floridians possessing ownership interests in corporations unfairly taxed by the" rule—suffer the same flaws. In any event, Florida's allegations come nowhere close to showing that the special rule inflicts "substantial economic injury" on "the general population" of Florida "in a substantial way," *Maryland*, 451 U.S. at 737, 739, as its *parens patriae* theory would require.

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[14] Florida's proposed complaint omits facts about its holdings in stocks in California corporations. But Florida refers (at n.15) to an investment report that reflects holdings in, for example, "Los Angeles Capital." That domestic equity fund reports holdings in Apple and Alphabet, two California corporations. State Bd. of Admin., *Annual Investment Report* 34 (2025), https://tinyurl.com/369uf6kb.

2. The nature of Florida's claims also weighs against an exercise of this Court's original jurisdiction. They are better resolved in the context of individual taxpayers' circumstances. *See, e.g.*, *Moorman Mfg.*, 437 U.S. at 270. But if this Court were to consider Florida's allegations now, they lack merit.

a. Florida asserts three constitutional claims, but focuses its arguments on the dormant Commerce Clause. *E.g.*, Mot.18-27. In general, "[t]he Court's Commerce Clause jurisprudence has 'eschewed formalism for a sensitive, case-by-case analysis of purposes and effects.'" *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 179-180 (2018). And this Court's four-part test to determine whether a State's exercise of its taxing power violates the Commerce Clause includes highly record-dependent inquiries. *Complete Auto Transit Inc. v. Brady*, 430 U.S. 274, 279 (1977).[15] The test asks whether "the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Id.*

The first and fourth requirements ("substantial nexus" and "fair relationship") look for "some definite link, some minimum connection, between a state and the person, property, or transaction it seeks to tax." *Wayfair*, 585 U.S. at 177; *see Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 625-626 (1981) (fair relationship requirement is "closely connected" to nexus

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[15] *E.g.*, Br. of Am. College of Tax Counsel 3 ("[T]he dispute implicates technical and data-intensive questions regarding how California's tax base, apportionment factor, and 'Special Rule' operate in practice"); *id.* at 3-4 (the dispute "may require economic modeling of apportionment effects and expert testimony regarding how value is generated").

requirement). As that formulation suggests, the inquiry necessarily focuses on the particular circumstances of each taxpayer.

The two decisions cited in Florida's motion (at 19-20) are illustrative. In *Norfolk & W. Ry. Co. v. Missouri State Tax Commission*, 390 U.S. 317, 323, 325 (1968), the Court carefully examined "strong evidence" in the "record" about the "actual count of . . . rolling stock in Missouri" before it concluded that a tax was invalid. *Id.* at 326. Similarly, in *Hans Rees' Sons v. North Carolina*, 283 U.S. 123, 134 (1931), the Court considered "*proof* that the formula produced a tax on 83% of the taxpayer's income when only 17% of that income actually had its source in the State," *Moorman Mfg.*, 437 U.S. at 274.

Florida's complaint, by contrast, contains nothing comparable. In Florida's discussion of three taxpayer challenges to the special rule (at 14-15), Florida identifies no data, numbers, or evidence that reveals the "actual" income that should be sourced to California. The taxpayers in those individual disputes likewise lacked such evidence.[16]

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[16] *In re T. Faries*, 2022-OTA-068 (Jan. 5, 2022) at 20 (taxpayer "failed to demonstrate . . . that excluding gross receipts . . . from the sales factor . . . causes [the business's] California apportionment percentage . . . to unfairly reflect the extent of [the business's] business activities in California"); *In re Amarr Co.*, 2022-OTA-041P (Dec. 9, 2021) at 17 n.27 ("[A]ppellants have not provided evidence to show that there is an unfair representation of [the corporation's] business activities in California."); *In re Worthington Oil & Gas Corp.*, 2024-OTA-217 (March 8, 2024) at 5 ("Appellant, however, has not provided evidence showing that . . . the approximation provided by the standard formula is not a fair representation of its business activities in this state[.]").

Florida, at least, appears to acknowledge the importance of "'evidence'" (at 20) when it accuses California of "blind[ing] itself" to the "'evidence'" of the "proportion [of] business transacted" in the State, *id.* But what Florida accuses California of ignoring is not evidence. It is the bare (and incorrect, *supra* pp. 4-5) assumption that income from the sale of an out-of-state asset bears no nexus to California. Similarly, in its hypothetical about widget selling companies (at 12-13), Florida focuses solely on the special rule's purported disregard for "where the sale-generating activity occurred," *id.* at 20. That is hardly the "strong evidence" or "proof" that this Court has typically considered before invalidating a state tax on dormant Commerce Clause grounds.

Florida's complaint is essentially indistinguishable from the allegations considered and rejected by the Court in *Moorman Manufacturing*. There, an Illinois corporation challenged Iowa's application of a single sales factor apportionment formula, contending the approach "results in extraterritorial taxation." 437 U.S. at 271-272. This Court rejected the claim, observing that the record did not contain an analysis showing what portion of the corporation's profits was attributable to activities in Illinois. *Id.* at 272; *see id.* at 275 (emphasizing "this record" did not "demonstrate that the single-factor formula produced an arbitrary result"). Rather, the business asked for relief "on the assumption that at least some portion of the income from Iowa sales was generated by Illinois activities." *Id.* at 272. The Court rejected the argument, holding that a "single-factor formula is presumptively valid," even if one were to "express[] doubts about the wisdom of the economic assumptions underlying the challenged formula." *Id.* at 273, 275 n.8.

Florida's argument is even bolder, asking the Court to assume that *all* income from the sale of an out-of-state asset "is attributable" to the asset's location, Mot. 23, not just "some portion of" it, *Moorman Mfg.*, 437 U.S. at 272. In essence, Florida appears to call for an allocation, as opposed to apportionment, of income from the occasional and substantial sale of (apportionable) business assets. But Florida's complaint offers no support for that proposition. And it is refuted by the rationale for the special rule—that sales activity, including in California, contributes to the increased value of an asset held by a unitary business over time, so the sales factor offers a "rough approximation of a corporation's income that is reasonably related to the activities conducted within the taxing State." *Moorman Mfg.*, 437 U.S at 273; *supra* pp. 4-5.

Florida does not even acknowledge the justification for the rule, let alone address why it is unsupported or irrational. *See Mobil Oil Corp. v. Comm'r of Taxes*, 445 U.S. 425, 436-437 (1980) (tax must reflect a "rational relationship between the income attributed to the State and the intrastate values of the enterprise"). Instead, Florida simply assumes that the special rule "apportion[s] California's share" of occasional asset sales "based on California's share of *unrelated* sales." Mot. 28 (emphasis added). That is wrong. *Supra* pp. 4-5.[17] To be sure, California's tax authorities have

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[17] *See, e.g.*, *In re Amarr Co.*, 2022-OTA-041P (Dec. 9, 2021) at 17 ("it is reasonable to infer that Amarr's California operations contributed to the creation of goodwill"); *In re T. Faries*, 2022-OTA-068 (Jan. 5, 2022) at 19 ("the income at issue—largely gain realized on the sale of goodwill—was accumulated over time as a result of [the company's] operational business activities in numerous states").

acknowledged "the possibility that it could be distortive to apportion net income from the sale of goodwill based solely on the California apportionment percentage in the year the sale occurred." *In re Amarr Co.*, 2022-OTA-041P (Dec. 9, 2021) at 19 n.32. That prospect can be addressed by individual taxpayers in specific disputes. *Supra* pp. 6-9. But the mere possibility of such a scenario does not sever the "link" or "minimum connection" between California and the tax. *Wayfair*, 585 U.S. at 177.

To the extent Florida argues that income from tangible property should be treated differently, Mot. 21, 23, Iowa's single sales factor formula considered in *Moorman* likewise covered income from the "sale of tangible personal property," *Moorman Mfg.*, 437 U.S. at 270. Florida suggests that the analysis is distinguishable here because Iowa's sales factor in *Moorman* would have included the gross receipts from the sale of property in the sales factor itself. Mot. 23. But California's formula also generally includes gross receipts in the sales factor, so long as the gross receipts are not "substantial" and "occasional," 18 Cal. Code Regs. § 25137(c)(1)(A)—potentially causing "excessive income to be apportioned to the state where the occasional sale took place," *see* Cal. Franchise Tax Bd., Legal Ruling 1997-1. Any dispute to that standard formula would require "clear and cogent evidence" of a "grossly distorted result." *Moorman Mfg.*, 437 U.S. at 274.

The second and third requirements of the *Complete Auto* test (fair apportionment and antidiscrimination) are likewise better evaluated in the context of a developed record. On fair apportionment, Florida rightly makes no argument about internal consistency. Mot.

21.[18] Florida focuses on external consistency, arguing that the special rule leads to "double taxation." *Id.*[19] *Moorman* resolves the argument, here, too. The Court observed that without gross sale and "*actual* profit[]" figures, it would be "speculative" to conclude that there is "duplicative taxation of the net income generated by" the taxing State's sales. 437 U.S. at 276. As the Court explained, "[o]bviously, all sales are not equally profitable." *Id.* Without such figures, the "essential factual predicate for a claim of duplicative taxation" is absent. *Id.*

Florida does not identify such record evidence with respect to the taxpayer disputes discussed in its complaint, Mot. 14-15, and its widget hypothetical simply presumes equivalence between business income and gross receipts, *id.* at 12-13. More importantly, Florida offers no basis to conclude that California, rather than Florida, is "at fault in a constitutional sense." *Moorman Mfg.*, 437 U.S. at 277. Indeed, given the rationale justifying the special rule, and the expectation that California-based sales contribute to the increase in value of an asset over time, a state tax scheme allocating all value of the relevant asset to a single State could present *greater* constitutional concerns.

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[18] The "internal consistency" test hypothetically assumes that every State has the same tax structure and tests whether its identical application by every State would place interstate commerce at a disadvantage compared to commerce intrastate. *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 561-562 (2015).

[19] "External consistency" evaluates whether "a State's tax reaches beyond that portion of value that is fairly attributable to economic activity within the taxing State." *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 185 (1995).

Moorman also answers Florida's anti-discrimination argument. 437 U.S. at 278 n.12; *see Container Corp.*, 463 U.S. at 171 ("[I]n the interstate commerce context, . . . the anti-discrimination principle has not in practice required much in addition to the requirement of fair apportionment."). Like the discrimination claim rejected in *Moorman*, Florida's "'discrimination' claim is simply a way of describing the potential consequences of the use of different formulas by . . . two States." *Id.* California's special rule treats both in-state and out-of-state corporations "with an even hand." *Id.* And as explained above, Florida's challenge rests on several incorrect assumptions about the location of a corporation's assets and a corporation's response to the special rule. *Supra* pp. 18-21.

b. Florida does not present distinct arguments in support of its Import-Export or Due Process Clause claims. *See* Mot. 25-26 (stating that the Commerce Clause arguments will "lead to the same result" under Import-Export Clause); *id.* at 28 (stating that Due Process requirements are "'encompassed by'" Commerce Clause inquiry). As with the dormant Commerce Clause claim, they are better resolved in the context of actual taxpayers' disputes. They lack merit as pled by Florida here. *Supra* pp. 22-28. Florida's Import-Export Clause claim is also plainly foreclosed by *Woodruff v. Parham*, 75 U.S. 123, 139 (1868), which holds that the clause's import limit applies only to foreign imports, not "goods imported from one State into another."

CONCLUSION

The motion for leave to file a bill of complaint should be denied.

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